

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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FERNANDO HERNANDEZ, KENNETH CHOW,  
BRYANT WHITE, DAVID WILLIAMS,  
MARQUIS ACKLIN, CECILIA JACKSON,  
TERESA JACKSON, MICHAEL LATTIMORE  
and JUANY GUZMAN, Each Individually, And On Behalf Of  
All Other Persons Similarly Situated,

*Plaintiffs,*

-against-

THE FRESH DIET INC.,  
LATE NIGHT EXPRESS COURIER SERVICES, INC. (FL),  
FRESH DIET EXPRESS CORP. (NY),  
THE FRESH DIET - NY INC. (NY),  
FRESH DIET GRAB & GO, INC. (FL) a/k/a  
YS CATERING HOLDINGS, INC. (FL) d/b/a  
YS CATERING, INC. (FL),  
FRESH DIET EXPRESS CORP. (FL),  
SYED HUSSAIN, Individually,  
JUDAH SCHLASS s/h/a JUDAH SCHLOSS, Individually,  
and ZAIMI DUCHMAN, Individually

*Defendants.*  
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**12 CV 4339 (ALC)(JLC)**

**AFFIDAVIT OF  
FERNANDO  
HERNANDEZ  
IN SUPPORT OF  
PLAINTIFFS' MOTION  
FOR PRELIMINARY  
CLASS ACTION  
CERTIFICATION**

**FERNANDO HERNANDEZ**, being duly sworn and subject to the penalties for perjury,  
deposes and says:

1. I am a New York resident and a former driver/food delivery employee for the  
Defendants.

2. I am a named Plaintiff in this action. I submit this affidavit in support of Plaintiffs'  
motion to certify this matter as a class action pursuant to Fed. R. Civ. P. 23 and based on the  
laws of the State of New York, including the New York Labor Law, with me as one of the class  
representatives.

3. I submit this affidavit based on my personal knowledge and I am prepared and competent to testify with respect to the matters set forth in this affidavit.

4. I previously have sworn to two affidavits in this action. I swore to an affidavit on July 9, 2012 in support of a motion for injunctive relief re: retaliation, and I swore to a second affidavit on September 24, 2012 in support of Plaintiffs' motion for preliminary or conditional collective action certification.

5. I reaffirm all of the statements in my prior two affidavits.

6. My job responsibilities as a driver/food delivery employee consisted of showing up to The Fresh Diet, Inc.'s Brooklyn facilities, receiving instructions as to my delivery routes, obtaining prepared meals, and personally delivering them to The Fresh Diet, Inc.'s customers throughout New York City and the tri-state metropolitan area, including locations in New York, New Jersey and Connecticut. After completing my meal deliveries, I would have to return to The Fresh Diet, Inc.'s Brooklyn facilities to check back in, complete required paperwork and return empty Fresh Diet bags.

7. Throughout my employment, my work was performed under the supervision, direction and control of Defendant Syed Hussain, who was the New York City-area Regional Delivery Manager for The Fresh Diet, Inc. and closely related companies. Defendant Hussain worked out of the Fresh Diet, Inc.'s Brooklyn facility and maintained an office there.

8. Throughout my employment, I often worked significantly in excess of forty (40) hours a week, yet was never paid overtime compensation of one and one-half (1.5) times my regular rate of pay.

9. During my employment with the Defendants, I interacted with other drivers/food delivery employees on a daily basis. I therefore know that my own experiences were typical of

how we were all supervised and compensated. Moreover, my duties, tasks and responsibilities were, in all material respects, the same as those of the other drivers and/or food delivery employees.

10. Based on my personal knowledge, which includes my personal experiences and observations, as well as my conversations with other drivers/food delivery employees, the following is true:

- (a) All drivers who worked for Defendants in the New York City area (the “New York City-area drivers”) were under the supervision, direction and control of Defendant Hussain;
- (b) All assignments were received from Defendant Hussain, and the New York City-area drivers had to do the work they had been assigned;
- (c) All New York City-area drivers had to report to Defendant Hussain at the beginning and end of each shift that they worked. At the end of their shifts, all New York City-area drivers had to report how many meals they had delivered, how many miles they had driven, and how many stops they had made. They also had to return empty bags. New York City-area drivers who did not comply with these requirements were subject to discipline, such as reductions in wages often characterized as “fines” and “penalties”, up to and including termination.
- (d) All New York City-area drivers were expected to report to work at specific times. The schedules were created by Defendant Hussain. New York City-area drivers could not decide when to show up for work. If they did not arrive to work at the assigned times they were subject to discipline, up to and including termination;
- (e) The New York City-area drivers were not at liberty to choose their assignments. They could not refuse to do the work that they had been assigned;
- (f) All New York City-area drivers had to complete the routes they had been assigned and to then report back to Defendant Hussain. If they failed to complete their assigned routes or if they missed an assigned stop, they were subject to discipline, up to and including termination;
- (g) Defendant Hussain could change driver schedules and reduce or increase assignments at his complete discretion, without advance notice to the New York City-area drivers;

(h) All New York City-area drivers performed the same type of work. That is, each one showed up to The Fresh Diet, Inc.'s Brooklyn facility at his assigned time, each would receive his route assignment for his shift, each one would take the meals that had been prepared in the kitchen by the kitchen staff, and then deliver the meals to customers. There were no meaningful differences in the duties, tasks and responsibilities of the different drivers;

(i) The delivery work was completely standardized. All drivers had to deliver the pre-prepared meals in the exact same way. Each meal had to be delivered in a bag provided by The Fresh Diet, Inc., and drivers had to return empty bags to the Brooklyn facility at the end of their shifts. What each New York City-area driver was required to do as far as delivering the meals to customers was the same as what any other driver was required to do, apart from the specific delivery routes;

(j) New York City-area drivers could not arrange with one another to change their assignments without those changes being authorized in advance by Defendant Hussain;

(k) New York City-area drivers who changed their assignments without first obtaining Defendant Hussain's approval were subject to discipline, up to and including termination;


(l) Any driver who deviated from ¶ 10(a)–10(k) was subject to discipline, up to and including termination;

11. In addition to myself, I am aware and have personal knowledge that the Defendants employed many other similarly situated drivers and/or food delivery employees and routinely failed to pay them overtime compensation of one and one-half times their regular rates for those hours that they worked in excess of forty (40) per week.


12. I have reviewed the document attached as Exhibit A, which I understand was produced by the Defendants on or about December 21, 2012. I recognize the majority of names on this list. The people whose names I recognize also worked as drivers and/or food delivery employees for the Defendants, and were under the supervision, direction and control of Defendant Hussain. These individuals had the same duties, tasks and responsibilities that I had, and had to deliver meals to customers in the ways outlined in ¶ 10.

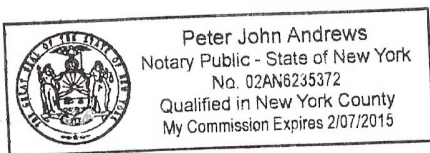
13. I fully understand my responsibilities and duties as a class representative, should I be designated as such, and particularly that I would owe a duty of loyalty to the class that I represent. I understand that this means that I must look after the interests of the class, and will undertake my best efforts to vigorously prosecute the action on the class members' behalf and ensure that the class is treated fairly and its interests are protected. I will make myself available to participate in all activities required to conduct the case in a professional and effective manner, including, but not limited to locating witnesses, documents, and evidence, submitting to depositions and examinations, and attending conferences. I will not compromise the interests of the class members for my own personal gain.

14. I declare under perjury that the foregoing is true and correct.

  
FERNANDO HERNANDEZ

Sworn to before me on February 1, 2013

  
Notary Public  
State of New York



# EXHIBIT A

Payroll Name	Address Line 1	Address Line 2	City	State/Province	Zip/Postal Code
Acklin, Marquis P	3236 Seymour		Bronx	NY	10469
Alexander, Banite	45b Birch Rd		Cedar Grove	NJ	07009
Alvarez, Julian	1245 Stratford Ave	Apt B-4	Bronx	NY	10472
Au, Vinh V	2069 E 14th St		Brooklyn	NY	11229
Banite, Chimeye Z	45 Birch Rd		Cedar Grove	NJ	07009
Barnett, Antione Tony	220 WOODWOLPH AV.	APT 1	Yonkers	NY	10701
Barrett, Michael A	6994 136th St		Flushing	NY	11367
Berniejo, Maria	95 Vanderveer St		Brooklyn	NY	11207
Bloomfield, Leonard S	280 Parkside Ave	Apt D1w	Brooklyn	NY	11226
Bonilia, Gladys M	4 River Rd	Apt 3k	Roosevelt	NY	10044
Brito, Rafael A	86-13 101 St		Richmond Hill	NY	11418
Britt, Jai	800 Soundview Ave		Bronx	NY	10473
Brown, William W	282 E 29th St		Brooklyn	NY	11203
Burgos, Angel L	252 Osborn St	Apt #2c	Brooklyn	NY	11212
Byrd, Shantel	112 Hoyt St	#2J	Stamford	CT	06905
Castillo, Nelson	66 Elm St		Staten Island	NY	10310
Castro, Omar R	1296 Sheridan Ave	2c	Bronx	NY	10456
Chow, Kenneth	3137 Coney Island Ave		Brooklyn	NY	11235
Chowdhury, Syed A	134-01 86th Road		Richmond Hill	NY	11418
Cines, Keyia	122 Tibow St	Apt #1	Brooklyn	MA	02301
Coleman, Boyce	24 Fairview St		Waterbury	CT	06710
Collado, Irving E	Po Box 560192		College Point	NY	11356
Colon, Carlos	1725 Randall Ave	#2C	Bronx	NY	10473
Correa, Juan C	247 Woodbine St		Brooklyn	NY	11221
Crespo, Jessica Y	4 River Road	Roosevelt Island	New York	NY	10044
Cruz, Adolfo	808 Park Ave	#1F	Brooklyn	NY	11206
Cynthia, Fincher M	5800 Arlington Ave	Apt 5s	Bronx	NY	10471
Dacres, Owen A	1003 Wilmohr St	Apt B2	Brooklyn	NY	11212
Dardaine, Wilton A	342 Fenimore ave		Uniondale	NY	11553
Datilus, David E	1283 Brooklyn Ave	Apt #1	Brooklyn	NY	11203
Deandre, Harris L	197 Drake Ave.	1D	Yonkers	NY	10805
DeLarosa, Denny M	2405 1st Ave	#86	New York	NY	10035
Dionicio, Julio	442 160th St	#4d	New York	NY	10032
Ezequiel, Ortiz	3760 Notch St		Macugie	PA	18062
Fenton, Damian C	550 Cauldwell Ave	#15E	Bronx	NY	10455
Figeroux, David	347 Bedford Ave		Uniondale	NY	11553

Figueroa, Jesus K	139-16 232nd St		Laurelton	NY	11413
Folkes, Christopher K	135-36 229 <sup>th</sup> St		Laurelton	NY	11413
Freeman, Anthony K	4230 Hill Avenue		Bronx	NY	10466
Gorin, Daniel J	279 Plateau Ave		Fort Lee	NJ	07024
Graham, Errol	130-32 236th St		Laurelton	NY	11422
Graham, Errol	130-32 236th St		Laurelton	NY	11422
Green, Eric D	150 Lefferts Ave	#5B	Brooklyn	NY	11225
Guerrero, Yajaira	17 Hill St	21	Brooklyn	NY	11208
Guzman, Juany D	3760 Notch Street		Macungie	PA	18062
Heaven, Rohan	1587 Carrol St	3d	Brooklyn	NY	11213
Hernandez, Fernando J	225 South 3rd St	Apt #4	Brooklyn	NY	11211
Hood, Katrina M	93 William St	APT #4F	Yonkers	NY	10701
Hunter, Joseph M	472 Franklin Ave	Apt 22	Mount Vernon	NY	10550
Hussain, Syed A	149-03 85th ST		Jamaica	NY	11435
Jackson, Cecilia	3236 Seymour Ave	2nd Floor	Bronx	NY	10469
Jackson, Theresa	55 School St	7c	Yonkers	NY	10701
James, Darryl	1803 Union St	#5B	Brooklyn	NY	11213
Justiniano, Emanuel	533 Bushwick Ave		Brooklyn	NY	11206
Khaili, Mohammed	92-16 Whitney Ave, Apt 203		Elmhurst	NY	11373
Kimble, Eugene	P.O. Box 1818		White Plains	NY	10602
Konate, Bengaly	1195 Anderson Ave	Apt 2b	Bronx	NY	10452
Lattimore, Michael K	PO Box 335		Yonkers	NY	10704
Lau, Alexander	24 Hansen Rd		Old Bridge	NJ	08857
Ledezma, Christian N	427 Baltic St	Apt 4a	Brooklyn	NY	11217
Li And Lyn Inc	20 Oliver St	Apt #3r	New York	NY	10038
Lopez, Joseph A	1944 Union Port Rd	N43	Bronx	NY	10462
Martina Jr, Evaristo	96 Lander St		Newburgh	NY	12550
McClinton, Mitchell W	21 St James Pl	#1M	Brooklyn	NY	11205
Nazrul, Islam	167-10 Highland Ave	#3	Jamaica	NY	11432
Ore, Oscar	6333 98th Place		Rego Park	NY	11374
Paredes, William F	87-27 169th St	#1A	Jamaica	NY	11432
Patrick, Paul H	184 Keeler Ave		Bridgeport	CT	06606
Paulino, Kenny	260-14 E. Williston Ave		Floral Park	NY	11001
Perez, Edwin	625 Jeffreson PL	#1A	Bronx	NY	10456
Perez, Jimmi	526 S 19th St		Newark	NJ	07103
Pichardo, Oscarlim T	316 E 184th St		Bronx	NY	10458
Ram, Brijesh T	177 Morse Pl		Englewood	NJ	07631



Ramirez, Luis B	165 Nagle Ave	#61	New York	NY	10040
Rijos Jr, Carlos	1711 Lacombe Ave	Apt 2c	Bronx	NY	10473
Rivas, Reginald	183 Sedgwick Ave	2nd Flr	Yonkers	NY	10705
Rodriguez, Michael J	351 E 21 St	Apt 4a	Brooklyn	NY	11226
Rosado, Jose	2039 Cruger Ave	#6a	Bronx	NY	10462
Rose, Alquon	141-54 184th St		Sprigfield Gard	NY	11415
Rose, Brandon	3546 Corsa Ave		Bronx	NY	10469
Ruiz, Jose A	63-17 83 <sup>rd</sup> Pl		Middle Village	NY	11379
Ruiz, Josue	474 Suydam St		Brooklyn	NY	11237
Salas, Andres	322 Rodney St		Brooklyn	NY	11211
Salazar, Diana	35-63 79th St	#4d	Jackson Heights	NY	11372
Shamsuzzoha, Nafis	1604 Metropolitan Ave	Apt 6f	Bronx	NY	10462
Soochoo, Wendy	32-22 Murray Lane		Flushing	NY	11354
Spence, Andrew O	121 So 14th Ave	Apt 2	Mount Vernon	NY	10550
Syed, Tabish	149-03 85th Rd		Jamaica	NY	11435
Tate, Joseph L	138-53 Sprigfield	Blvd	Sprigfield Gard	NY	11413
Tavares, Maria	316 E 184th St	Apt #1	Bronx	NY	10458
Torres, Barron	80 School St		Yonkers	NY	10701
Traverzo, Drew	17 Van Sieten	#3d	Brooklyn	NY	11207
Velez, Claudia M	1735 Madison Ave	#3A	New York	NY	10029
Vines, Donald M	13602 Tree Leaf Ct		Upper Marlboro	NY	20774
White, Bryant	41 Hawthorne Ave	Apt 3a	Yonkers	NY	10701
William, Still P	39 Winfred Ave	Apt #2	Yonkers	NY	10704
Williams, David	39 Convent Ave		Yonkers	NY	10703
Wright, Leanora P	1587 Carrol St	#3D	Brooklyn	NY	11213
Zapata Abrey, Alexander	555 Fdr Drive	1b	New York	NY	10002